No. 82-6729

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

GIRVIES DAVIS,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition For Writ Of Certiorari To
The Supreme Court Of Illinois

STATUS REPORT

NEIL F. HARTIGAN,
Attorney General,
State of Illinois,

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Counsel for Respondent.

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TERENCE M. MADSEN,
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Assistant Attorneys General,

Of Counsel.

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STATUS REPORT

Now comes the Respondent, PEOPLE OF THE STATE OF ILLINOIS, through NEIL F. HARTIGAN, Attorney General of the State of Illinois, to report on the status of the Motion For Fitness Hearing and Examination in the case of People v. Davis, No. 80-CF-5, in the Circuit Court of Madison County, Illinois. The People state as follows:

1. The Illinois Supreme Court affirmed the jury-imposed death sentence of Girvies Davis on February 18, 1983. A petition for rehearing was denied on April 8, 1983. People v. Davis, 95 Ill. 2d 1, 447 N.E.2d 353 (1983).

2. On May 6, 1983, and again on May 10, 1983, Girvies Davis filed motions with the Illinois Supreme Court asking that Court to set a firm execution date and order that Charles Schiedel, Assistant Appellate Defender, not be allowed to act on his behalf any further. The motions were denied. On May 13, 1983, Mr. Schiedel filed a petition for writ of certiorari without affidavits of indigency.

3. In response to an inquiry from the Clerk of this Court, Girvies Davis affirmed his intent not to cooperate with

Mr. Schiedel's efforts in this Court on July 19, 1983. On August 26, 1983, the Illinois Appellate Defender filed a motion asking this Court to order a hearing to determine Davis' competence. On September 27, 1983, this Court directed the respondent to address the Illinois Appellate Defender's motion.

4. While investigating the allegations contained in the August 26 motion, the Illinois Attorney General was informed by Mr. Donald Weber, State's Attorney of Madison County, Illinois, that People v. Davis, No. 80-CF-5, was currently pending in the Circuit Court of Madison County, Illinois. That action involves a murder charge which is wholly unrelated to the proceedings in this case. A motion for a fitness hearing pursuant to the provisions of Ill. Rev. Stat., 1983, ch. 38, § 104-11, had been filed in that action.

5. On October 11, 1983, respondent advised this Court of the pending motion for a fitness hearing in the Madison County case and suggested that relying on the results of that hearing may relieve this Court of taking the extraordinary step of extending Rees v. Payton, 384 U.S. 312 (1966), to cases where an attorney seeks to invoke this Court's jurisdiction without consent of his "client" and then asks this Court to determine the "client's" competence to refuse to cooperate. Respondent then asked this Court to stay further consideration of the Appellate Defender's motion until it could be determined whether a fitness hearing will be conducted in People v. Davis, No. 80-CF-5.

6. On October 14, 1983, a hearing on State's Attorney Weber's motion was held before the Honorable A. A. Matoesian, Judge of the Third Judicial Circuit of Illinois. Defendant, individually and through his trial counsel, objected to the motion for a fitness hearing and his counsel argued against the motion.[1]

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[1] A copy of the proceedings on the motion is attached hereto. To avoid confusion with citations to the record below, references to this motion hearing are cited as (MH. ___).

7. Following argument on the motion, [illegible] as follows:

> THE COURT: Well, first off, the Court can take into consideration whatever happens before it. Actually this is a continuation of a trial that started several years ago. I should say this is the sentencing, or we're getting ready for the sentencing phase because of the remand from the Supreme Court.
>
> * * *
>
> From the-- What I've seen today of the Defendant and from the arguments of counsel and from the actions of Defendant going back two years ago, I do not have a bona fide question as to Defendant's fitness to stand trial or to be executed for that matter.
>
> In effect, the State's Motion for a Fitness Hearing and Examination and a Motion for Appointment of Psychiatrist is denied. . . . There is no bona fide question as to Defendant's sanity or fitness to stand trial.

(MH. 35-37)

8. The People respectfully suggest that, in view of the trial court's explicit findings and the resistance to a fitness hearing on the part of Davis' current trial counsel, this Court should deny the Appellate Defender's motion that this Court order a determination of fitness.

WHEREFORE, the People ask that this Court enter an Order denying both the Motion to Order Determination of Competence and the Petition for Writ of Certiorari.

Respectfully submitted,

NEIL F. HARTIGAN,
Attorney General,
State of Illinois,

MICHAEL V. ACCETTURA,
Assistant Attorney General,
188 West Randolph Street,
Suite 2200,
Chicago, Illinois 60601,
(312) 793-2570,

Counsel for Respondent.

MARK L. ROTERT,
TERENCE M. MADSEN,
JAMES E. FITZGERALD,
Assistant Attorneys General,

Of Counsel.

APPENDIX

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

OCT 2 1983

THE PEOPLE OF THE STATE OF ILLINOIS)
)
VS.) NO: 80-CF-5
)
GIRVIES DAVIS,)
Defendant)

BYSTANDER'S REPORT

I, Don Weber, State's Attorney of Madison County, being duly sworn upon oath state as follows:

1. That I am the State's Attorney of Madison County, Illinois, and was the prosecutor in the case of People vs. Girvies Davis, No. 80-CF-5;

2. That Davis was convicted of the murder of Esther Sepmeyer by Judge A. A. Matoesian in 1981;

3. That as State's Attorney of Madison County I elected to proceed to seek the death penalty against Davis for the murder of Esther Sepmeyer;

4. That a jury was duly impaneled and heard evidence concerning factors in aggravation pursuant to the Illinois Death Penalty Statute and found that the death penalty should be imposed upon Davis;

5. An automatic appeal was taken to the Illinois Supreme Court whereupon the Illinois Supreme Court affirmed the conviction for murder of Girvies Davis but reversed the death penalty judgment and remanded the case for a new hearing with respect to the imposition of the death penalty;

6. That the death penalty hearing is currently pending in the Circuit Court of Madison County;

7. That the defense lawyer, Public Defender Tyler Bateman, filed various motions with respect to Davis, some of which were heard on the 14th day of October, 1983;

8. Prior to October 4, 1983, I filed Motion For Fitness Hearing And Examination pursuant to Chapter 38, Section 104 to determine the defendant's fitness to be sentenced. (See Exhibit A attached hereto.);

9. That the State's Motion was based upon the need for a judicial determination, one way or the other, with respect to Davis' competency to be sentenced;

10. That the defendant was represented by counsel, who, to the best of my information and belief, had been in contact with defendant's appellate counsel;

11. That on October 14, 1983, Judge A. A. Matoesian found, adjudged, and decreed that there was no bonified doubt of Davis' mental competency or fitness to stand trial and therefore refused to order a fitness examination;

12. That a copy of the proceedings held on October 14, 1983, are attached hereto as Exhibit B;

13. That the defendant and his attorney had ample time to present evidence concerning Davis' competency but presented no evidence at the hearing held on October 14, 1983.

Don W. Weber

DON W. WEBER
State's Attorney, Madison County

STATE OF ILLINOIS)
) ss.
COUNTY OF MADISON)

SUBSCRIBED AND SWORN to before me, a Notary Public in and for the said County and State this 21st day of October, 1983.

Denise M. O'Neil

Notary Public

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

FILED
OCT 0 2 1983
CLERK OF CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
-vs-) NO. 80-CF-5
)
GIRVIES DAVIS,)
Defendant)

OCT 2 1983

MOTION FOR FITNESS HEARING AND EXAMINATION

Come now the People of the State of Illinois, by Don Weber, State's Attorney, and move the Court to order the defendant herein to be examined to be examined pursuant to Illinois Revised Statutes, Chapter 38, Section 104, to determine the defendant's fitness to be sentenced. In support of said Motion, the People state as follows:

1. That the defendant herein currently stands convicted of the Murder of Esther Sepmeyer;

2. That the sentencing hearing herein, on remand from the Supreme Court of Illinois, is to be heard on the October, 1983, criminal docket before Judge A. A. Matoesian;

3. That the defendant has also been convicted of Murder in St. Clair County, Illinois, sentenced to death, and that said case and sentence was affirmed by the Supreme Court of Illinois;

4. That to the best of the information and belief of the People, the defendant has indicated his desire to forego further appeals and to be executed;

5. That to the best of the information and belief of the People, the defendant's trial attorney in the above-entitled matter is considering filing a Motion to Determine Competency pursuant to Chapter 38, Section 104, due to the defendant's desire to forego further appeals;

6. That due to the nature of the penalty herein, the circumstances of this particular defendant, and the need for absolute procedural integrity, the People feel that the defendant's competence should be judicially determined pursuant to statute;

WHEREFORE, the People pray that the Court enter an order directing the defendant to be examined pursuant to Chapter 38, Section 104, and for the Court to determine the defendant's fitness to be sentenced and executed.

Respectfully submitted,

Don W Weber

DON W. WEBER
STATE'S ATTORNEY
MADISON COUNTY, ILLINOIS

STATE OF ILLINOIS)
)
COUNTY OF MADISON)

AFFIDAVIT

Don Weber, after first being duly sworn, on oath, deposes and says that all things stated herein are true best to his information and belief.

Don Weber

SUBSCRIBED and SWORN to before me
this 5th day of October, 1983.

Notary Public

IN THE CIRCUIT COURT
FOR THE THIRD JUDICIAL CIRCUIT OF ILLINOIS
MADISON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
v.	)	No. 80 CF 5
	)	
GIRVIES DAVIS,	)	
	)	
Defendant.	)	

REPORT OF PROCEEDINGS
MOTIONS

Report of Proceedings of the hearing before the Honorable A. A. MATOESIAN on the 14th day of October, 1983.

APPEARANCES:

MR. DON W. WEBER, State's Attorney, appears for the People.

MR. TYLER J. BATEMAN, Assistant Public Defender, appears with the Defendant.

LORI J. KINCAID, CSR
Official Court Reporter
Madison County Courthouse
Edwardsville, Illinois 62025

(The following proceedings were held before the Court.)

THE COURT: Today we have the case of The People versus Girvies Davis, 80 CF 5. The People are present by State's Attorney Don Weber. Defendant Girvies Davis is present in open court and represented by Attorney Tyler Bateman.

The matters to be taken up today are the Motion for Fitness Hearing and Examination filed by the State on October 5, 1983, and Motion to Disqualify filed by Defendant on October 7, 1983. Since the motions were filed a-- two more motions have come in. One is a Motion for Appointment of Psychiatrist filed by the State on October 12, 1983. That's, I guess, in conjunction with the motion filed by the State on October 5, 1983. That's a suggestion of a psychiatrist. Today the Court has received a motion by the Defendant-- or, by Mr. Bateman. That motion is Motion to Withdraw as Counsel.

Okay, the first motion filed is the Motion for a Fitness Hearing and Examination filed by the State October 5, 1983. Mr. Weber.

MR. BATEMAN: Your Honor, excuse me. I have a couple things. Number one, are all these chains and everything on Mr. Davis necessary?

THE DEFENDANT: That's all right. That's all right. Leave them on. That's okay.

MR. BATEMAN: Now, with-- You know, that would be the evidence I would have to offer on the motion. I would have some argument.

THE COURT: Okay.

MR. BATEMAN: May I have one moment? Mr. Davis wants to say something to me.

(Attorney Bateman confers with the Defendant.)

MR. BATEMAN: Your Honor, Mr. Davis tells me that he wants to object to all the motions and wants to leave right now. In other words, I assume he says he wants to waive his presence. I don't think that's in his best interest, but he wanted me to bring that to the Court's attention.

MR. WEBER: Judge, let me say this, that after the disposition of this motion, Mr. Davis has got a preference on what the lawyers are doing with him. And he's never had an opportunity to address the Court in a formal setting and to tell the Court how he feels. And if this motion is denied, I am going to ask that Mr. Davis take the stand and be allowed to tell the Court how he feels about these motions and any other motions. And I think that's his right to say that if he wants to. And if he wants to not say that, that's his right. If he wants to say it, that's his right. But I would like him to stay in the courtroom until that time.

because I think he's got a right to address the Court himself and to tell the Court how he feels.

MR. BATEMAN: Well, as he indicated to me just now, he wanted to object to each of these motions. He didn't say he wanted to take the witness stand. He said he wanted to leave.

THE COURT: Well, a defendant has the right to be present during any proceedings had involving him. He also has the right not to be present.

MR. BATEMAN: I think with respect to these three motions, he is probably-- You know, I think I'm capable of arguing them without his presence.

MR. WEBER: I intend to call the Defendant as a witness.

MR. BATEMAN: Well, I'm going to object to the Defendant being called as a witness.

MR. WEBER: Well then it's up to the Defendant.

MR. BATEMAN: No. It's not up to the Defendant.

THE COURT: Well, let me address the Defendant.

Mr. Davis, do you wish not to be present for the motions that are being argued today?

THE DEFENDANT: Right.

THE COURT: You understand you have the right to be present, but you don't wish to be present, is that right?

THE DEFENDANT: That's right.

THE COURT: You-- Would you prefer to wait in the witness room right next door to this courtroom?

THE DEFENDANT: I'd prefer going back to the jail and getting sent back to the penitentiary.

THE COURT: I'm sorry, you want to do what?

THE DEFENDANT: I prefer to be sent back to the jail to be sent back to the penitentiary.

MR. BATEMAN: In other words, he's saying . . .

MR. WEBER: He's not going back to the penitentiary today.

THE COURT: Well, you have the choice --

THE DEFENDANT: I say I prefer it. I say I prefer it, you know.

THE COURT: You have the choice of staying in this courtroom during the arguments and motions, you can wait in the anteroom next door if you wish, or you can wait at the County Jail. Which do you prefer?

THE DEFENDANT: I prefer waiting at the County Jail.

THE COURT: Okay.

MR. WEBER: Judge, to save some time, can we see if he wants to make a statement on my motion because if he doesn't, if he gets over there, we have to bring him back to see if he does.

THE COURT: Well, --

MR. BATEMAN: I don't anticipate Mr. Davis --

THE COURT: He prefers not to be present. He has a right not to be.

MR. BATEMAN: His statement is he objects to it.

MR. WEBER: He objects to what?

THE COURT: Wait a minute.

Take Mr. Girvies (Sic.) back to the jail.

(Whereupon the Defendant is escorted out of the courtroom and the proceedings upon his own request.)

(Whereupon the following proceedings were held before the Court.)

THE COURT: We'll proceed with the Motion to Disqualify.

MR. BATEMAN: Thank you, Your Honor.

THE COURT: Is that-- Mr. Weber.

MR. BATEMAN: I . . .

THE COURT: You're arguing the Motion to Disqualify filed October 7.

MR. BATEMAN: Okay. Thank you, Your Honor.

THE COURT: Okay.

MR. WEBER: He's still doing it. I don't think he's said anything yet. Or have you?

today.

MR. BATEMAN: I think you can let the record reflect, Your Honor, that I have on what I'd refer to as very nice plaid pants, pair of slacks.

Now, I would also like the record to reflect the tie that Mr. Weber is wearing which puts my slacks to shame, Your Honor. I disagree with my opinion. You have a right.

I would, in serious vein, if Mr. Weber is done with his argument, -- I think they should be required.

MR. WEBER: I'm quite finished.

MR. BATEMAN: -- address one comment and that is the comment he made that the proper remedy is to disqualify the judge. That speaks exactly what I'm talking about. That recognizes that there's some problem. What I'm saying is that Mr. Weber, in seeking personal financial gain or seeking to avoide pecuniary loss, chose to bring that situation about, and that should not interfere with Mr. Davis's absolute right which he made that conscious decision when he waived the jury and had the trial in front of Your Honor.

THE COURT: The Motion to Disqualify filed by Mr. Bateman on October 17, 1983, is denied.

The next matter we have is the Motion for Fitness Hearing and Examination filed by the State on October 5, 1983. And I take it that your October 12 motion, Mr. Weber, is

merely to make a suggestion as to who should be appointed in the motion of October 5, I take it.

MR. WEBER: Yes, Your Honor.

THE COURT: Okay. Mr. Weber.

MR. WEBER: I think that the only way to properly proceed at this point is to inquire of the defense whether or not they agree or disagree with my motion. They haven't filed a responsive pleading. It's not generally practiced that they do, but I think they should be required at this point to stake out a position on my motion.

MR. BATEMAN: I'd like to see the evidence first, Your Honor.

THE COURT: I guess that means no.

MR. WEBER: Okay.

MR. BATEMAN: No. I assume if he's going to present some evidence, I'd like to see what it is first.

THE COURT: Okay, Mr. Weber.

MR. WEBER: The evidence that I have, I would like the Court to take judicial notice of what they have noted about Mr. Davis in the courtroom today, about his answering coherently, expressing clearly his will in the matter about being present. He knew he was in the courtroom. He knew he wanted to be in jail, and he knew after jail he would go to Menard where evidentally he likes it better. He answered and

responded to the judge's questions. He responded to commands. He appeared to be completely rational, and I think that the Court--

My evidence in this matter is just to raise the question and to secure a judicial determination of whether or not a bona fide question exists as to Mr. Davis's sanity. And the evidence that I would present would be what I have in my motion and the Court's own reflections. And I would ask the Court to use that specifically in making findings today on that, and I will let this motion rest with whatever the defense has and in the judgment of the Court to determine if a bona fide question of Mr. Davis's sanity exists, particularly in light of the fact that the Court has had a firsthand opportunity to observe and converse with the Defendant today.

THE COURT: Okay. Mr. Bateman.

MR. BATEMAN: Thank you, Your Honor.

As far as I can tell, the only evidence that the State is asking the Court to consider -- and please correct me if I'm wrong -- is the Defendant's behavior in the courtroom today. Is that correct?

MR. WEBER: Well, I am at this point opening up this hearing for any evidence that the defense has to present on this matter. I filed the motion for the legal mechanism.

If the defense has any evidence at this time I won't object to any evidence they want to put in, anything they've had. They've probably been in contact with the Appellate Defender. They've probably interviewed the Defendant. If they have any evidence whatsoever anywhere I'd like it to be presented.

THE COURT: Mr. Bateman.

MR. BATEMAN: Well, Your Honor, I don't choose to present any evidence at this time. I would have argument with respect to Mr. Weber's motion and evidence.

THE COURT: Mr. Weber.

MR. WEBER: I'll waive this part of my argument, Your Honor.

THE COURT: Mr. Bateman.

MR. BATEMAN: The-- What Mr. Weber refers to the Defendant's conduct in court, I don't think anyone could draw any conclusions about it whatsoever as to anybody's understanding, number one, of anything, anybody's understanding of the process, whether a person understands the process, doesn't understand the process.

The only thing I think Mr. Davis understood -- and it's clear by his actions -- is he didn't like sitting in this chair shackled and chained with four or five Madison County deputy sheriffs hovering around, and he found it more comfortable in his jail cell. And I would say the only con-

clusion that can be drawn, that's why he asked to go to the jail. To say that that either shows a person's competent or not competent with respect to the motion the State has filed I think is totally meaningless.

I think for anyone to draw any conclusions one way or another is totally meaningless. I will say I don't think the State has presented evidence -- and all I take is conduct that we saw from the Defendant here in court today, very limited conduct, I would suspect on the transcript will come out as almost, if not, unintelligible conduct (it struck me as unintelligible almost) -- that I don't think they've made a showing that at this time he should be examined for the purposes that they state.

THE COURT: Mr. Weber.

MR. WEBER: The State's position is that it's up to the Court, and I'm not going to advocate one way or another what the Court should do.

However, I would ask the Court to make specific findings in a judicial termination as to our petition bearing in mind that the defense has had ample time to present any evidence that they could ever want to present or that they had to this hearing, and evidentally the defense's position -- as I understand it -- is that there is no bona fide question of Mr. Davis's sanity and that's a determination to

be made by the Court based on the fact, not only of the State's motion but of the lack of any evidence despite the concepts of collateral estoppel and res judicata that should apply in this case, and for the Court to make a decision. But I would ask for specific findings in the decision.

MR. BATEMAN: My only comment would be that that's not my position at all. My position is that based on the motion the State has filed and the evidence that the State has presented on that motion that, you know, as far as I can tell, they, in essence, have two motions before the Court. They want some German, I guess -- I guess she's American now -- psychiatrist, that knowing Mr. Weber probably is Illinois' version of Dr. Doom, to look at Mr. Davis and come back and tell everybody what a fine, upstanding man he is and the most competent person they ever saw.

I'm not taking the position he's competent at all, Your Honor. I'm just saying they had this motion filed, I expected the State was going to put on some evidence, and in essence they put on no evidence. And I'm just saying, looking at the evidence, I don't think they meet their burden.

THE COURT: Anything else, Mr. Weber?

MR. WEBER: (No response.)

THE COURT: Well, first off, the Court can take into consideration whatever happens before it. Actually this

is a continuation of a trial that started several years ago. I should say this is the sentencing, or we're getting ready for the sentencing phase because of the remand from the Supreme Court.

It's true that if a question as to Defendant's fitness to stand trial or be sentenced is raised, the Court must determine whether there is a bona fide doubt as to Defendant's fitness.

The-- I think the Court has the right and power to take into consideration Defendant's actions, testimony, demeanor that it's witnessed from the last time we were in court. It can also take into consideration his actions and conduct today.

However, when it's brought to the Court's attention by either defense counsel or the State a question as to Defendant's fitness, the Court must base its decision on the evidence presented.

From the-- What I've seen today of the Defendant and from the arguments of counsel and from the actions of Defendant going back two years ago, I do not have a bona fide question as to Defendant's fitness to stand trial or to be executed for that matter.

In effect, the State's Motion for a Fitness Hearing and Examination and a Motion for Appointment of Psychiatrist

is denied. The request by the State, however, to make specific findings that the Defendant is fit to stand trial, I don't think the Court can do that. But the Court does rule on the motion before it. There is no bona fide question as to Defendant's sanity or fitness to stand trial.

MR. BATEMAN: Your Honor, could I do one thing? I may have been negligent. Mr. Davis wanted me to object to all these motions for him, so, you know, he wanted, you know, he wanted to, so just for the record.

THE COURT: That's-- I wanted to get into that. Defendant did not want you to file the motions that you filed in the last couple weeks.

MR. BATEMAN: I guess that's what he means, Your Honor. He objects to them. He objects to the State's motions too. I mean, I'm only conveying that because he asked me to. That's not the position I'm taking for him.

THE COURT: This case is tentatively set for trial October 24 of this month-- October 24, that is this month. Of course he might change his mind by then --

MR. BATEMAN: That's correct, Your Honor.

THE COURT: -- whether he wants to be present.

What say the People about readiness for trial on October 24?

MR. WEBER: We'll be ready for trial, Your Honor.